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EXAMINER

FOREMAN, JONATHAN M

ART UNIT

PAPER NUMBER

3736

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Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

# Office Action Summary

Application No.

09/938,953

Applicant(s)

PAGNACCO ET AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 - 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 12 is objected to because of the following informalities: two periods follow the claim. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. Claims 1, 3, 12, 14, 23, 25, 34 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1, 12 and 23 are indefinite because there is insufficient antecedent basis for the limitation "the device" in the claims.
4. Claims 3, 14, 25 and 35 are rejected to because the term "reciprocated" makes it unclear where the carriage is and what it does.
5. Claims 12, 23 and 3 are rejected to because the term "reciprocated" makes it unclear where the abutment is and what it does.

### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Melton.

In reference to claim 1, Melton discloses a system (Figure 1) comprising: a force measuring apparatus (18); an abutment attached at a location spaced from and in opposition to the force

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measuring apparatus (20); an apparatus for delivering screening stimulus (28) proximate the abutment and for calculating height measurements (34) between the abutment and the device (Col. 5, lines 28 – 39); input apparatus for accepting patient responses to the screening stimulus (30); and a processing unit associated with the force measuring apparatus, the apparatus and the input apparatus for collecting and storing a) the measured weight (Col. 6, lines 16 – 26), b) patient responses from the input apparatus and c) calculated height measurements between the abutment and the force measuring apparatus (Col. 6, lines 30 – 39).

8. Claims 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Cha.

In reference to claim 12, Cha discloses a system (Figure 4a) comprising: a base (9); a scale attached to the base for measuring weight (11); a support (unnumbered) projecting away from the base and the scale; a reciprocated abutment attached to the support in opposition to the scale (16); an apparatus for delivering screening stimulus (15) proximate the abutment and for calculating height measurements between the abutment and the scale (Col. 5, lines 23 – 25); input apparatus for accepting patient responses to the screening stimulus (Col. 5, lines 23 – 28); and a processing unit associated with the scale, the apparatus and the input apparatus for collecting and storing a) measured weight (Col. 4, lines 31 – 33), b) patient responses from the input apparatus and (Col. 4, lines 25 – 28) c) calculated height measurements between the abutment and the device (Col. 4 lines 23 – 28).

In reference to claim 14, Cha shows that the carriage (Y-shaped bar) supports the abutment and the apparatus and is reciprocated to the support.

9. Claims 1, 4, 5, 7 – 9, 11, 12, 14 – 16, 18 – 20 and 22 are rejected under 35 U.S.C. 102(a) as being anticipated by Yang.

In reference to claim 1, Yang discloses a system (Figure 7) comprising: a force measuring apparatus (106); an abutment (104) attached at a location spaced from and in opposition to the force measuring apparatus; an apparatus for delivering screening stimulus (120, 110) proximate the abutment and for calculating height measurements between the abutment and the device; input apparatus for accepting patient responses to the screening stimulus (135); and a processing unit associated with the force measuring apparatus (150), the apparatus and the input apparatus for collecting and storing a) the measured weight, b) patient responses from the input apparatus and c) calculated height measurements between the abutment and the force measuring apparatus.

In reference to claim 4, Yang discloses the screening stimulus comprising visual acuity stimulus (See Abstract).

In reference to claim 5, Yang discloses the apparatus including: a display (120), and visual acuity stimulus displayed by the display.

In reference to claim 7, Yang discloses a keypad (137) for accepting input patient responses to the visual acuity stimulus.

In reference to claim 8, Yang discloses the screening stimulus comprising audible acuity stimulus (See Abstract).

In reference to claim 9, Yang discloses the apparatus including: speakers (110), and the audible acuity stimulus issued by the speakers.

In reference to claim 11, Yang discloses a keypad (137) for accepting input patient responses to the audible acuity stimulus.

In reference to claim 12, Yang discloses a system (Figure 7) comprising: a base (107); a scale attached to the base for measuring weight (106); a support (103) projecting away from the base and the scale; a reciprocated abutment (104) attached to the support in opposition to the scale; an

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apparatus for delivering screening stimulus (120, 110) proximate the abutment and for calculating height measurements between the abutment and the scale; input apparatus (135) for accepting patient responses to the screening stimulus; and a processing unit (150) associated with the scale, the apparatus and the input apparatus for collecting and storing a) measured weight, b) patient responses from the input apparatus and c) calculated height measurements between the abutment and the device.

In reference to claim 14, Yang shows that the carriage (102) supports the abutment and the apparatus and is reciprocated to the support.

In reference to claim 15, Yang discloses the screening stimulus comprising visual acuity stimulus (See Abstract).

In reference to claim 16, Yang discloses the apparatus including: a display (120), and visual acuity stimulus displayed by the display. /

In reference to claim 18, Yang discloses a keypad (137) for accepting input patient responses to the visual acuity stimulus.

In reference to claim 19, Yang discloses the screening stimulus comprising audible acuity stimulus (See Abstract).

In reference to claim 20, Yang discloses the apparatus including: speakers (110), and the audible acuity stimulus issued by the speakers.

In reference to claim 22, Yang discloses a keypad (137) for accepting input patient responses to the audible acuity stimulus.

### *Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 3, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Homs.

In reference to claims 2 and 13, Yang fails to teach having the force measuring apparatus/scale being pivoted to a base. However, Homs shows an apparatus having a hinge between the scale and the base (Figure 1). One with ordinary skill in the art at the time the invention was made would have been motivated to supply the apparatus as disclosed by Yang with a hinge as taught by Homs in order to make the system more compact for shipping and storage (Col. 1, lines 1 – 15).

In reference to claim 2, Yang shows that the carriage (102) supports the abutment and the apparatus and is reciprocated to the support.

12. Claims 6, 10, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Mitchell et al.

In reference to claims 6, 10, 17 and 21, Yang discloses an input apparatus for accepting patient responses to the visual and audible acuity stimulus, but does not teach this input apparatus to be a microphone. However, Mitchell et al. discloses an input apparatus that includes a microphone for accepting verbal patient responses (See claim 23). One skilled in the art at the time the invention was made would have been motivated to include a microphone as taught by Mitchell et al. for accepting verbal patient responses to the system as disclosed by Yang in order to input information into the system (Col 5, lines 43 – 49).

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13. Claims 23 and 25 – 27, 29 – 31, 33 – 37, 39 – 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Berme et al.

In reference to claim 23, Yang discloses a system (Figure 7) comprising: a base (107); a force platform attached to the base (106); a support (103) projecting away from the base and the force platform; a reciprocated abutment (104) attached to the support in opposition to the force platform; an apparatus for delivering screening stimulus (120, 110) proximate the abutment and for calculating height measurements between the abutment and the force platform; input apparatus (135) for accepting patient responses to the screening stimulus; and a processing unit (150) associated with the force platform, the apparatus and the input apparatus for collecting and storing a) measured forces, b) patient responses from the input apparatus and c) calculated height measurements between the abutment and the device, but does not teach the force platform measuring balance forces.

However, Berme et al. discloses a force measuring device that measures balance forces (Col. 1, lines 38 – 41). One skilled in the art at the time the invention was made would have been motivated to modify the force platform as disclosed by Yang to incorporate the measuring capabilities of the force platform as taught by Berme et al. in order to have the ability to measure and test a subject's balance, coordination, gait, movement, posture, stability and instability, and sway (Col. 2, lines 1 – 5).

In reference to claim 25, Yang shows that the carriage (102) supports the abutment and the apparatus and is reciprocated to the support.

In reference to claim 26, Yang discloses the screening stimulus comprising visual acuity stimulus (See Abstract).

In reference to claim 27, Yang discloses the apparatus including: a display (120), and visual acuity stimulus displayed by the display.



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In reference to claim 29, Yang discloses a keypad (137) for accepting input patient responses to the visual acuity stimulus.

In reference to claim 30, Yang discloses the screening stimulus comprising audible acuity stimulus (See Abstract).

In reference to claim 31, Yang discloses the apparatus including: speakers (110), and the audible acuity stimulus issued by the speakers.

In reference to claim 33, Yang discloses a keypad (137) for accepting input patient responses to the audible acuity stimulus.

In reference to claim 34, Yang discloses a system (Figure 7) comprising: a load bearing surface (107); a scale for measuring weight applied to the load bearing surface (106); a support (103) projecting away from the load bearing surface; a reciprocated abutment (104) attached to the support in opposition to the load bearing surface; an apparatus for delivering screening stimulus (120, 110) proximate the abutment and for calculating height measurements between the abutment and the load bearing surface; input apparatus (135) for accepting patient responses to the screening stimulus; and a processing unit (150) associated with the scale, the apparatus and the input apparatus for collecting and storing a) measured weight and measured balance forces, b) patient responses from the input apparatus and c) calculated height measurements between the abutment and the load bearing surface, but does not teach the force platform measuring balance forces. However, Berme et al. discloses a force measuring device that measures balance forces (Col. 1, lines 38 – 41). One skilled in the art at the time the invention was made would have been motivated to modify the force platform as disclosed by Yang to incorporate the measuring capabilities of the force platform as taught by Berme et al. in order to have the ability to measure and test a subject's balance, coordination, gait, movement, posture, stability and instability, and sway (Col. 2, lines 1 – 5).

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In reference to claim 35, Yang shows that the carriage (102) supports the abutment and the apparatus and is reciprocated to the support.

In reference to claim 36, Yang discloses the screening stimulus comprising visual acuity stimulus (See Abstract).

In reference to claim 37, Yang discloses the apparatus including: a display (120), and visual acuity stimulus displayed by the display.

In reference to claim 39, Yang discloses a keypad (137) for accepting input patient responses to the visual acuity stimulus.

In reference to claim 40, Yang discloses the screening stimulus comprising audible acuity stimulus (See Abstract).

In reference to claim 41, Yang discloses the apparatus including: speakers (110), and the audible acuity stimulus issued by the speakers.

In reference to claim 43, Yang discloses a keypad (137) for accepting input patient responses to the audible acuity stimulus.

14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Berme et al. as applied to claim 23 above and in further view of Mitchell et al.

In reference to claim 24, Yang fails to teach having the force platform being pivoted to the base. However, Homs shows an apparatus having a hinge between the force platform and the base (Figure 1). One with ordinary skill in the art at the time the invention was made would have been motivated to supply the apparatus as disclosed by Yang with a hinge as taught by Homs in order to make the system more compact for shipping and storage (Col. 1, lines 1 – 15).

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15. Claims 28, 32, 38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Berme et al. as applied to claims 27, 31, 37 and 41 above and in further view of Mitchell et al.

In reference to claims 28, 32, 38 and 42, Yang discloses an input apparatus for accepting patient responses to the visual and audible acuity stimulus, but does not teach this input apparatus to be a microphone. However, Mitchell et al. discloses an input apparatus that includes a microphone for accepting verbal patient responses. One skilled in the art at the time the invention was made would have been motivated to include a microphone as taught by Melton, Jr. for accepting verbal patient responses to the system as disclosed by Yang in order to input information into the system (Col 5, lines 43 – 49).

### *Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 5,080,109 to Arme, Jr.

U.S. Patent No. 5,694,199 to Rodriguez

U.S. Patent No. 5,925,000 to Marciniak et al.

U.S. Patent No. 6,280,396 to Clark

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (703)-305-5390. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 3130. The fax phone numbers for the organization where this

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application or proceeding is assigned are (703)-308-0758 for regular communications and (703)-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0858.



JMLF

September 23, 2002



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